

Letter of Findings: 09-0750P
Income Tax
For the Tax Years 2002 and 2003

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ISSUE

I. Tax Administration–Negligence Penalty.

Authority: IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of negligence penalties for the 2002 and 2003 tax years.

STATEMENT OF FACTS

Taxpayer failed to timely file individual income tax returns and remit payment for the 2002 and 2003 tax years (Tax Years).

In a letter sent to the Department of Revenue (Department), the executor of taxpayer's estate has provided information regarding the health of taxpayer during the Tax Years. The executor filed the subject returns and paid income tax, including interest and penalties. The executor requests that the Department refund the negligence penalties.

The Department sent a letter to Taxpayer stating that Taxpayer could request a hearing by replying to the letter within twenty (20) days of the letter. The executor did not reply to the Department's letter. Due to Taxpayer's failure to reply, this Letter of Findings is written based on the information in Taxpayer's protest file and other Department records relating to Taxpayer.

DISCUSSION

I. Tax Administration–Negligence Penalty.

Taxpayer protests the imposition of the ten percent negligence penalties for the tax years in question. The Department refers to IC § 6-8.1-10-2.1(a)(2), which provides "if a person... fails to pay the full amount of tax shown on the person's return on or before the due date for the return or payment... the person is subject to a penalty."

The Department also refers to [45 IAC 15-11-2\(b\)](#), which states:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department may waive the negligence penalty as provided in [45 IAC 15-11-2\(c\)](#), as follows:

The department shall waive the negligence penalty imposed under [IC § 6-8.1-10-2.1] if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

The executor's letter detailed the taxpayer's failing health during, and subsequent to, the Tax Years. The executor has affirmatively established that taxpayer's failure to file income tax returns and remit payment for Tax Years was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2\(c\)](#).

FINDING

Taxpayer's request to refund the negligence penalties paid for 2002 and 2003 is granted.

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